

Message Text

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ORIGIN EUR-12

INFO OCT-01 ISO-00 L-03 HEW-02 SCS-03 SCA-01 CIAE-00

INR-07 NSAE-00 SS-15 SP-02 H-02 NSC-05 SIL-01 LAB-04

SAJ-01 EB-07 /066 R

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P 132339Z AUG 75

FM SECSTATE WASHDC

TO AMEMBASSY BONN PRIORITY

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E.O. 11652:GDS

TAGS: OVIP (ARENDT, WALTER), ELAB, SWEL, GW

SUBJECT:PROPOSED US-FRG SOCIAL SECURITY AGREEMENT AND
VISIT OF FRG LABOR MINISTER

REF: (A) BONN 12945 (B) BONN 12460

1. DEPARTMENT REGRETS THAT IT HAS ONLY RECENTLY HAD
OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSED FRG-US
SOCIAL SECURITY TOTALIZATION AGREEMENT. WE FULLY SUPPORT
THE NEED FOR RAPID ACCEPTANCE BY BOTH SIDES OF AN AGREED-
UPON TEXT AND SIGNATURE BY APPROPRIATE OFFICIALS AT THE
EARLIEST CONVENIENT DATE.

2. TOWARD THIS END, AND TO REMOVE UNWARRANTED MFA
CONCERNS, DCM OR POL COUNSELOR IS REQUESTED TO CALL ON
APPROPRIATE SENIOR MFA OFFICIAL TO DISCUSS THE MATTER,
DRAWING ON FOLLOWING POINTS: EMBOFF SHOULD EXPRESS OUR
BELIEF THAT ISSUE SEEMS UNDESERVING OF MFA CONSTERNATION
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INDICATED IN REFTELS, AND THAT OUR POSITION, AS INDICATED

IN THIS MESSAGE, IS BASED ON TECHNICAL AND NOT ONLY POLITICAL GROUNDS. HE SHOULD SUGGEST THAT WE SEE NO REASON NOT TO REACH RAPID RESOLUTION OF THIS ISSUE IN ACCORDANCE WITH FRG LABOR MINISTRY'S PROPOSAL FOR A DEFINITION BASED ON THE FCN TREATY OR, IF ACCEPTABLE, WITH

NO SPECIFIC DEFINITION AT ALL.

3. DEPARTMENT WANTS TO CLARIFY THAT IT DOES NOT RPT NOT INSIST ON OR PROPOSE DELETION OF TERM QUOTE NATIONAL UNQUOTE FROM THE PROPOSED AGREEMENT. NOR DOES DEPARTMENT PROPOSE THAT, IN DETERMINING WHO IS OR WHO IS NOT AN FRG NATIONAL, THE FRG APPLY ANYTHING OTHER THAN ITS OWN LAW, INCLUDING, IN PARTICULAR, ARTICLE 116 OF THE BASIC LAW. THE DEPARTMENT WOULD NOT EXPECT SUCH FRG DETERMINATIONS TO GIVE RISE TO ANY PROBLEMS IN THE SOCIAL SECURITY CONTEXT AND WOULD EXPECT THE US, FOLLOWING NORMAL INTERNATIONAL PRACTICE IN SUCH MATTERS, TO RELY ON SUCH FRG DETERMINATIONS. THE EXCEPTIONS IN INTERNATIONAL PRACTICE TO ONE STATE ACCEPTING THE DETERMINATION OF ANOTHER AS TO THE LATTER'S CITIZENSHIP SHOULD NOT BE SIGNIFICANT IN THIS CONTEXT.

4. IN VIEW OF ABOVE, OMISSION OF A DEFINITION RPT DEFINITION OF NATIONAL WOULD BE WITHOUT ANY PREJUDICE TO THE FRG POSITION ON THE QUESTION OF NATIONALITY AND WOULD NOT IMPEDE SUCCESSFUL FUNCTIONING OF A SOCIAL SECURITY AGREEMENT. DEPARTMENT FAVORS OMISSION OF A DEFINITION OF QUOTE NATIONAL UNQUOTE FROM THE AGREEMENT NOT ONLY BECAUSE IT IS UNNECESSARY TECHNICALLY TO INCLUDE ONE, BUT ALSO BECAUSE OF OUR OPPOSITION, AT FRG RPT FRG REQUEST, TO INCLUSION OF A DEFINITION OF NATIONAL IN THE US-GDR CONSULAR AGREEMENT CURRENTLY BEING NEGOTIATED. WE HAVE BUTTRESSED OUR POSITION WITH THE GDR BY REFERENCE TO MODERN US TREATY PRACTICE AS WELL AS THE ABSENCE OF NEED, A POSITION WHICH WOULD BE UNDERMINED BY THE INCLUSION OF THE PROPOSED DEFINITION OF FRG NATIONAL IN THE SOCIAL SECURITY AGREEMENT. THE FACT THAT OTHER WESTERN NATIONS HAVE NEGOTIATED SIMILAR AGREEMENTS WITH THE FRG AND GDR WHICH INCLUDE MUTUALLY EXCLUSIVE LIMITED OFFICIAL USE

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REFERENCES TO NATIONALITY DOES NOT ALTER OUR POSITION.

5. DEPARTMENT IS PREPARED, HOWEVER, TO ACCEPT AD REFERENDUM SUGGESTION OF FRG NEGOTIATORS TO INCLUDE A REFERENCE TO THE QUOTE DEFINITION UNQUOTE OF NATIONAL CONTAINED IN FCN TREATY. WHILE ANY DEFINITION HAS DRAW-BACK MENTIONED IN PARA 4, FCN TREATY DEFINITION IS ONE WE HAVE ALREADY USED IN A BASIC US-FRG AGREEMENT, AND, THUS,

IT SHOULD BE LEGALLY ACCEPTABLE TO BOTH SIDES. FURTHER, IT IS CONSISTENT WITH THE LONGSTANDING U.S. POSITION, EVIDENCED BY THE STATE DEPARTMENT LETTER OF AUGUST 24, 1962 (WHITEMAN'S DIGEST OF INTERNATIONAL LAW, VOLUME 7, P. 686), WHICH DISTINGUISHES THOSE GERMANS WITH RESPECT TO WHOM FRG JURISDICTION IS EFFECTIVE INTERNATIONALLY FROM THOSE GERMANS WHO MIGHT CONSIDER THEMSELVES EXCLUSIVELY

GDR CITIZENS OR OTHERWISE NOT EFFECTIVELY FRG SUBJECTS. THE MFA SHOULD BE FAMILIAR WITH THIS LETTER. THE FCN APPROACH WOULD ALSO APPEAR TO BE MORE CONSISTENT WITH THE FRG REPRESENTATIONS TO US IN THE CONTEXT OF THE US-GDR NEGOTIATIONS, WHICH QUITE PROPERLY EMPHASIZED THE ROLE IN INTERNATIONAL LAW OF NATIONALITY WHICH THE WILL OF THE AFFECTED INDIVIDUAL SHOULD PLAY.

6. THE U.S. IS HOPEFUL THAT THE QUESTION OF INCLUDING A DEFINITION OF NATIONAL IN THE SOCIAL SECURITY AGREEMENT CAN BE RESOLVED ON THE BASIS OF PURELY TECHNICAL CONSIDERATIONS. IN VIEW OF THE FACT THAT THE LONG-ESTABLISHED SITUATION HAS FUNCTIONED WELL IN PRACTICE WHERE QUESTIONS OF NATIONALITY MAY BE INVOLVED, INCLUSION OF A SPECIFIC DEFINITION IN THIS AGREEMENT OUGHT NOT TO BE TRANSFORMED INTO A MATTER OF HIGH POLITICAL PRINCIPLE. SHOULD THE QUESTION NOT BE RESOLVED PRIOR TO SEPTEMBER 3, WE COULD ENVISAGE RESERVING THE MATTER TO A POSSIBLE SUBSEQUENT SUPPLEMENTARY PROTOCOL AND PROCEEDING WITH THE SIGNATURE OF THE REMAINDER OF THE AGREEMENT AS SCHEDULED.

7. DEPARTMENT WILL CALL IN SENIOR FRG EMBASSY OFFICIAL THIS WEEK IN ORDER EXPLAIN US POSITION HERE AS WELL. WE WILL EMPHASIZE NEED TO RECOGNIZE OUR CONCERN ON TECHNICAL GROUNDS AND THAT OUR POSITION DOES NOT RPT NOT LIMITED OFFICIAL USE

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SIGNIFY ANY HISTORICALLY SIGNIFICANT SHIFT IN OUR APPROACH TO THE GERMAN QUESTION.

8. DEPARTMENT WOULD APPRECIATE REPORT ON MFA RESPONSE ASAP. IF MFA INDICATES WILLINGNESS TO ACCEPT REVISED OR NO DEFINITION OR TO LEAVE QUESTION FOR LATER SUPPLEMENTARY PROTOCOL, EMBASSY SHOULD INDICATE TO MINISTER ARENDT THAT SEPTEMBER 3 DATE FOR SIGNING AGREEMENT CAN BE MET IF HE WISHES TO RECONSIDER HIS DECISION TO POSTPONE U.S. VISIT. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, SOCIAL INSURANCE, LABOR ATTACHES
Control Number: n/a
Copy: SINGLE
Draft Date: 13 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE192341
Document Source: CORE
Document Unique ID: 00
Drafter: RBCASAGRANDE/L/EUR:DHSMALL:BJR
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750280-0350
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750855/aaaabwet.tel
Line Count: 164
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 BONN 12945, 75 BONN 12460
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 30 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <30 MAY 2003 by CunninFX>; APPROVED <07 OCT 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ROPOSED US-FRG SOCIAL SECURITY AGREEMENT AND VISIT OF FRG LABOR MINISTER
TAGS: OVIP, ELAB, SWEL, GE, US, (ARENDR, WALTER)
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006